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We hold in this case that Alaska's local hire law, AS 36.10.010,[1] which requires that work on public construction

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1. AS 36.10.010 provides:

> (a) In the performance of contracts let by a municipality for construction, repair, preliminary surveys, engineering studies, consulting, maintenance work or any other retention of services necessary to complete any given project, 95 percent residents shall be employed where they are available and qualified. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified. In all cases of public works projects, preference shall be given to residents. In an area which has been designated as an area impacted by an economic disaster, residents of that area shall be given employment preference as provided in AS 44.33.290, followed by other residents of the state.
>
> (b) When a construction project is partly or wholly funded by state money and the state or an agency of the state, a department, office, agency, state board, commission, regional school board with respect to an educational facility under AS 14.11.020, public corporation or other organizational unit of or created under the executive, legislative or judicial branch of state government, including the University of Alaska, is a signatory to the construction contract, the contract shall require that the worker hours on a craft-by-craft basis shall be performed at least 95 percent by bona fide state residents. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified. In an area which has been designated as an area impacted by an economic disaster, residents of that area shall be given employment preference as

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projects be performed almost entirely by Alaska residents, violates the privileges and immunities clause of article IV, § 2 of the United States Constitution.

I. FACTUAL AND PROCEDURAL SETTING

James Francis, a Montana resident, was employed in 1983 as an ironworker by Regan Steel & Supply, a sub-contractor on a North Pole High School project. When the Department of Labor discovered that Regan Steel had a work force of more than five percent non-residents on the project, it sent an enforcement notice to the company. As a result, the company discharged Francis.

Francis sued the state and various state officials,[2] seeking a declaration that the local hire law is unconstitutional under the privileges and immunities and the equal protection clauses of the United States Constitution and under the equal rights clause of the Alaska Constitution. In addition, injunctive relief and damages under 42 U.S.C. § 1983 were sought.

Following a non-jury trial, the superior court entered a partial final judgment declaring that the statute violated the

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provided in AS 44.33.290, followed by other residents of the state.

2. The International Association of Bridge, Structural and Ornamental Ironworkers, Local 751 intervened as a defendant.

privileges and immunities clause. In support of its decision, the court filed detailed findings of fact, including the following:

> Between April, 1980, and July, 1982, the population of Alaska has grown by nearly fifteen percent (15%).
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> The population of Alaska has increased in the recent past more rapidly than at any other time in its history, and the State is growing more rapidly than other states in the union.
>
> Property values in Alaska have been increasing over the last five years.
>
> Alaska is not a depressed area as that term is used in the economics profession.
>
> All sectors of the Alaska economy are expanding and Alaska has experienced very rapid economic growth since 1980.
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> Employment in Alaska in 1983 was at record levels, and the rate of increase was the best since the days of the Alaska Pipeline in 1974-1975.
>
> In 1983, the construction industry was the strongest sector in the state's economy, and it has had the greatest impact on the Alaska economy since the Alaska Pipeline years.
>
> The construction industry in Alaska was exceptionally strong in both the public and private sectors during 1983.
>
> The major factor affecting the level of employment in Alaska in the construction industry is climatic changes as a result of extreme temperature differentials in the winter and summer months. Construction declines to substantially lower levels during the winter months, and increases, peaking out in August and September, during the latter summer months. During the peak periods of construction activity, the state experiences its lowest rate of unemployment.

The expenditure of state funds are a major factor affecting the level of employment in Alaska generally, and the construction industry in particular. The state expenditure for public works projects accounts for approximately sixty to seventy percent (60% to 70%) or more of the total annual construction dollar outlay within the state.

Private investment has a lesser effect on the level of construction activity from year to year in the State of Alaska, and such effect, from time to time, is affected by interest rates.

Unemployment is substantially greater in the rural areas than in the urban areas. The unemployment rate in Anchorage is less than the national average, while in the rural areas it is greater than the national average and greater than the average within the State of Alaska.

The construction activity is greater within the urban area than within the rural areas. Unemployment is less within the urban areas than within the rural areas.

Rural Alaskans lack the training that urban Alaskans have access to in construction work.

In-migration in the State of Alaska is a factor affecting unemployment in the construction industry in Alaska.

Reasonable inferences from the evidence support a finding that most of the job seekers coming to Alaska intend to become residents upon their entry into the state, thus contributing to the rapid population growth within the state.

* There is not sufficient evidence to support a finding that nonresident construction workers are a peculiar source of unemployment in the construction industry in Alaska any more than they would be in any other state. The only inference that can be drawn from the record is that nonresident construction workers come to Alaska to work during peak construction

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periods of time, during which there are more jobs available and less unemployment resulting.

Among the court's conclusions of law were:

The right to obtain employment in any state is a fundamental right and is a privilege which shall be immune from any burden unless the State of Alaska can show a legitimate purpose for such burden. In this case, the State has failed to establish by a preponderance of the evidence such a legitimate purpose.

The defendants and intervenor have failed to prove by a preponderance of the evidence that nonresident construction workers constitute a peculiar source of unemployment in the State of Alaska.

Serious factors affecting unemployment within the State of Alaska are the extreme climatic conditions, the change in the legislative appropriation for public works construction projects, the extreme rapid growth of population experienced by Alaska, and the wildly fluctuating interest rates which have a direct effect on the private sector construction spending.

Statistics over the last several years demonstrate that Alaska's unemployment rate has increased at a rate lesser than the nationwide average. Whereas Alaska's unemployment rate for several years was substantially greater than the nationwide rate, it now stands much closer to the national average, further supporting the conclusion that nonresident employment is not a serious factor in the unemployment rate in Alaska.

The State and the intervenor have failed to prove by a preponderance of the evidence that there is a substantial reason to discriminate against employment of citizens of other states on public works construction projects within the State of Alaska.

> The State and intervenor have failed to prove by a preponderance of the evidence that the preference granted Alaska residents is closely tailored to alleviate unemployment in the construction industry in the State of Alaska.

II. PURPOSE OF THE PRIVILEGES AND IMMUNITIES CLAUSE

The privileges and immunities clause of section 2, article IV of the United States Constitution provides:

> The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.[3]

The primary purpose of this clause is to prevent state from enacting measures which discriminate against non-residents for reasons of economic protectionism. Supreme Court of New Hampshire v. Piper, ___ U.S. _____, 53 U.S.L.W. 4238, 4240 n.18 (1985). Historically, it was meant to:

> [h]elp fuse into one Nation a collection of independent, sovereign States. It was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy. For protection of such equality the citizen of State A was not to be restricted to the uncertain remedies afforded by diplomatic processes and official retaliation. "Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have

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3. The terms "citizen" and "resident" are essentially interchangeable for the purpose of review under the privileges and immunities clause. Hicklin v. Orbeck, 437 U.S. 518, 524, 57 L.Ed.2d 397, 403, n.8 (1978).

> constituted little more than a league of States; it would not have constituted the Union which now exists."
>
> In line with this underlying purpose, it was long ago decided that one of the privileges which the clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State.

Toomer v. Witsell, 334 U.S. 385, 395-96, 92 L.Ed. 1460, 1471 (1948) (footnote omitted, citations omitted). In brief, the clause was meant "to prevent discrimination against non-residents, to further the concept of federalism, and to create a national economic unit." Sheley v. Alaska Bar Association, 620 P.2d 640, 642 (Alaska 1980) (citations omitted).

III. FRAMEWORK FOR ANALYSIS OF PRIVILEGES AND IMMUNITIES CLAIMS

A. Nature of the Right.

The privileges and immunities clause does not protect non-residents against all forms of discrimination. Its reach is limited to "fundamental rights" - rights involving "basic and essential activities, interference with which would frustrate the purposes of the formation of the union." Baldwin v. Montana Fish and Game Commission, 436 U.S. 371, 387, 56 L.Ed.2d 354, 367-68 (1978).

B. Substantial Justification.

If the threshold fundamental rights requirement is met, discrimination is only permitted where there is a subst

reason which justifies it. Toomer, 334 U.S. at 396, 92 L.Ed. at 1471. "No 'substantial reason' will be found absent some showing that nonresidents are 'a peculiar source of the evil' which the state's action is meant to remedy." Noll v. Alaska Bar Association, 649 P.2d 241, 243 (Alaska 1982) quoting Hicklin v. Orbeck, 437 U.S. 518, 526-27, 57 L.Ed.2d 397, 405 (1978).

C. Close Relationship Between Perceived Problem and Statutory Solution.

Moreover, the presence of a substantial reason for discrimination does not alone suffice. The means employed by the challenged statute must be closely related to the interests served by the statute. Toomer, 334 U.S. at 396, 92 L.Ed. at 1471; Hicklin, 437 U.S. at 527, 57 L.Ed.2d at 405. "In deciding whether the discrimination bears a close or substantial relationship to the state's objective . . . the availability of less restrictive means" is relevant. New Hampshire v. Piper, _____ U.S. at _____, 53 U.S.L.W. at 4241.

D. Market Regulator - Market Participant Distinction.

This method of analysis applies both when the state is acting as a sovereign - a market regulator - and as an owner - a market participant.[4] United Building & Construction Trades v.

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4. When the state acts as an employer, a lender, a landlord, a buyer, a seller, or an owner of natural resources, it may be regarded as a market participant and for some purposes will be treated differently than when it acts solely as a

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Mayor and Council of the City of Camden, ___ U.S. ___ 79 L.Ed.2d 249, 259-61 (1984); Hicklin, 437 U.S. at 528-29, 57 L.Ed.2d at 406. However, more leeway is granted the state in its perception of "local evils and in prescribing appropriate cures" when it is acting in a proprietary capacity, as where it "is merely setting conditions on the expenditures of funds it controls." Camden, ____ U.S. at ____, 79 L.Ed.2d at 261 (citations omitted).

This analytical framework, except for the deference given to the state as a market participant, is quite similar to what has come to be called the level of intermediate scrutiny under the federal equal protection clause. Classifications may be made only for "important" purposes, and the means used to accomplish them must be "fairly and substantially related" to the achievement of those purposes. State v. Ostroskv, 667 P.2d 1184, 1192 (Alaska 1983) (citations omitted).[5]

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sovereign body regulating the conduct of others within its jurisdiction. See generally Wells and Hellerstein, The Governmental Proprietary Distinction in Constitutional Law, 66 Va. L. Rev. 1073 (1980).

5. The coverage of the two clauses is overlapping but not identical. The privileges and immunities clause does not apply to corporations, or to aliens, while the equal protection clause does, and the equal protection clause applies to many classifications, while the privileges and immunities clause applies only to those based on residence. L. Tribe, American Constitutional Law § 6-33 at 411-12. Alienage classifications involving non-U.S. citizens are subject to at least an intermediate level of review under federal equal protection doctrine. Tribe, supra § 16-31 at 1089-90; Sugarman v. Dougall,

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The amount of deference due a state when acting as a market participant is not clear from federal cases. The state suggests, and we believe, that a variable standard must be employed. Thus, where the discrimination is far-reaching and exclusive in nature, and extends to the fringes of the state's proprietary interests, the state is entitled to little deference. On the other hand, where the discrimination is narrow in scope and involves a direct relationship between the state and affected individuals, greater deference is called for.

The "Alaska Hire" statute struck down in Hicklin, which covered all employment which was the "result" of state oil and gas leases, which excluded all non-residents from employment so long as qualified Alaskans were available, and which required private employers to discriminate, including those who had no direct dealings with the state, is an example of a case in which the proprietary interest of the state was entitled to little or no deference. An example where more leeway is due might be a case in which a state law requires residency as a qualification for important non-elective public offices. Cf. Sugarman v. Dougall, 413 U.S. 634, 647-49, 37 L.Ed.2d 853, 862-64 (1973).

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413 U.S. 634, 642, 37 L.Ed.2d 853, 860 (1973). The removal of the "disabilities of alienage" in the sense of discrimination based on residency in another state of the United States is central to the privileges and immunities clause. Paul v. Virginia, 75 U.S. 168, 180, 19 L.Ed. 357, 360 (1868).

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IV. ANALYSIS

A. The Nature of the Right.

For purposes of privileges and immunities analysis employment in the construction industry must be considered to be a fundamental right entitled to the protection of the privileges and immunities clause. That conclusion was implied in Hicklin, 437 U.S. at 524-25, 57 L.Ed.2d at 404 (1978) and was made explicit in Camden, ___ U.S. at ___, 79 L.Ed.2d at 260-61.

B. The State's Justification.

The justification proffered for the discrimination inherent in the local hire law is Alaska's historically high unemployment rate. For each year between 1970 and 1983, except 1975, unemployment in Alaska was higher than the national average.[6]

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6. A table prepared by the state's expert witness shows the following:

Unemployment Rates
U.S., Alaska
1970 - 1983

	U.S.	Alaska
1970	4.9%	7.1%
1971	5.9	8.3
1972	5.6	8.3
1973	4.9	8.5
1974	5.6	7.9
1975	8.5	6.9
1976	7.7	8.5
1977	7.0	9.3
1978	6.0	11.0
1979	5.8	9.3

(Footnote Continued)

Unemployment in the construction industry is a substantial factor in the overall rate of unemployment. Non-resident construction workers contribute to unemployment in the construction industry because, according to the state, they "take jobs which otherwise would go to Alaskan residents. As such non-resident construction workers are a peculiar source of the unemployment problem in Alaska because they take those construction jobs which otherwise could be filled by unemployed Alaskans." In essence, the state's justification for the local hire law is that it tends to reduce unemployment in Alaska by eliminating non-residents from public works construction projects.

C. Degree of Deference Due The State As A Market Participant.

The scope of the discrimination mandated by the local hire law is extensive. All municipal projects and all projects funded by the state, in whole or in part, are covered. This amounts to some 60 to 70% of all commercial construction in the state. As to those projects covered by the law, non-residents are almost entirely excluded. For example, on Francis's construction crew of 26 workers, 25 of them had to be residents. For crews of fewer than 10 workers all non-residents are

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1980	7.1	9.6
1981	7.1	9.2
1982	9.7	10.0
1983	9.6	10.4

excluded. The statute applies to subcontractors who have no direct contractual relationship with the state, and it seeks to pressure private employers to discriminate in their hiring practices. However, it is limited to employment on public works projects, and as such does not extend, as did the Alaska Hire Act struck down in Hicklin, to activity in which the state has no proprietary interest.

The pervasiveness and intensity of the discrimination mandated by the act indicate that review should be conducted untempered by consideration of the state's status as a market participant in public works projects. The fact that the act does not extend to activities in which the state's proprietary interest is lacking, taken alone, would suggest a less rigorous standard of review. However, this cannot be conclusive in light of the scope and magnitude of the discrimination. On balance we conclude that review approaching that of the intermediate level of scrutiny is called for.

D. Substantiality Of The Justification As A Factual Matter.

There is no doubt that Alaska has an unemployment rate which is higher than the national average and that this constitutes a serious problem. What is lacking is a showing that non-residents are a "peculiar source of the evil" of unemployment. This is in the first instance a factual question. Camden,

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____ U.S. at ____, 79 L.Ed.2d at 262; Hicklin, 437 U.S. at 526-27, 57 L.Ed.2d at 40[illegible].

The trial court found that "there is not sufficient evidence to support a finding that non-resident construction workers are a peculiar source of unemployment in the construction industry in Alaska anymore than they would be in any other state." Instead, the trial court detailed other causes of unemployment in the construction industry, including climatic extremes, the absence of construction activities in rural areas, and the lack of training prevalent among rural Alaskans. These findings, which are similar to those noted by the United States Supreme Court in Hicklin, 437 U.S at 526-27, 57 L.Ed.2d at 405, are supported by the record.[7] As such they are not clearly erroneous and may not by disturbed on appeal. Civil Rule 52(a).

E. Substantiality Of The Justification As A Matter Of Law.

As noted, the purpose of the local hire law is to exclude non-residents from public construction jobs so that more jobs will be available to Alaskans. In our view this is not a permissible justification for discrimination under the privileges

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7. In State v. Wylie, 516 P.2d 142 (1973), we struck on equal protection grounds a statute giving a preference in state employment to persons who had resided in the state for one year. We referred to evidence "which indicates that the state's unemployment problems stem from inadequate education and vocational training and from insufficient job opportunities in remote areas of the state." Id. at 149 (footnote omitted).

and immunities clause. To state the same conclusion in conventional privileges and immunities terms, the justification is not "substantial."

A related point recently was made by the United States Supreme Court in New Hampshire v. Piper, ___ U.S. at ___, 53 U.S.L.W. at 4241 n.18. One reason suggested for New Hampshire's law prohibiting non-resident lawyers from becoming members of the bar was the protection of its own lawyers from professional competition. The court dismissed this suggestion: "[T]his reason is not substantial'. The privileges and immunities clause was designed primarily to prevent such economic protectionism."

Discrimination for the purpose of benefiting local residents economically was recognized by us as improper in Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975) which involved a statute granting grandfather rights to resident trucking companies but not to non-resident trucking companies. We struck down the statute stating:

> A discrimination between residents and non-residents based solely on the object of assisting the one class over the other economically can not be upheld under either the privileges and immunities or equal protection clauses. . . .
>
> Benefiting economic interests of residents over non-residents is not a purpose which may constitutionally vindicate legislation. . . .

Id. at 710-11.

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Other authorities which suggest that a state may not discriminate against non-residents in order to benefit residents economically include:

- Hicklin, 437 U.S. at 526, 57 L.Ed.2d at 405. The court observed that for a state to attempt to eliminate its unemployment problem by requiring private employers within the state to discriminate against non-residents was a policy which was "at least dubious."

- Toomer v. Witsell, 334 U.S. 385, 92 L.Ed. 1460 (1948). South Carolina was precluded from excluding non-resident shrimp fishermen in order to create a commercial monopoly which benefited resident fishermen.

- Ward v. Maryland, 12 Wall 418, 20 L.Ed. 449 (1871). Maryland was precluded from discriminating against non-resident salesmen so that resident merchants might reap greater economic benefits.

- Metropolitan Life Insurance Co. v. Ward, __ U.S. __, 105 S. Ct. 1676 (1985). The Court struck an Alabama law discriminating against out-of-state insurance companies as violative of the equal protection clause. The purpose of the law was to promote domestic industry. The Court held that this purpose was not a legitimate justification for discriminatory treatment: "[P]romotion of domestic business within a state, by discriminating against foreign corporations that wish to compete by doing

business there, is not a legitimate state purpose." ____ U.S. at ____, 105 S.Ct. at 1683.[8]

These cases reflect the view that our constitution protects non-residents from economic discrimination so that our nation can function as an economic unit. Justice Brennan expressed this theme in his concurring opinion in Allied Stores of Ohio v. Bowers, 358 U.S. 522, 533, 3 L.Ed.2d 480, 488 (1959) cited with approval by the Court in Metropolitan Life, ____ U.S. at ____, 105 S.Ct. at 1682, stating:

> Wheeling [Steel Corp v. Glander 337 U.S. 562] teaches that a distinction which burdens . . . nonresidents but not . . . residents is outside the constitutional pale. But this is not because no rational ground can be conceived for a classification which

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8. This case was decided on equal protection rather than privileges and immunities grounds. The difference, however, is not significant in the present context because the method of analysis is similar and the privileges and immunities clause provides non-resident individuals with more stringent protection against economic discrimination than does the equal protection clause in cases where the basis for the challenged classification is non-residence. L. Tribe, American Constitutional Law § 6-33, at 411-12.

In United Building and Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden, ___ U.S. ____, 79 L.Ed.2d 249 (1984), the United States Supreme Court neither rejected nor approved a city program involving discrimination against non-city residents on public works projects. That case is discussed more fully on pages 24 through 25, infra. The fact that the program was not rejected in the face of a justification of grave economic and social ills may mean that local or state governments may foster discrimination in order to stave off an economic or social collapse, a goal broader than, but related to, that of benefiting local residents economically.

> discriminates against nonresidents solely because they are nonresidents: could not such a ground be found in the State's benign and beneficent desire to favor its own residents, to increase their prosperity at the expense of outlanders, to protect them from, and give them an advantage over, "foreign" competition? These bases of legislative distinction are adopted in the national policies of too many countries, including from time to time our own, to say that, absolutely considered, they are arbitrary or irrational. The proper analysis, it seems to me is that Wheeling applied the Equal Protection Clause to give effect to its role to protect our federalism by denying Ohio the power constitutionally to discriminate in favor of its own residents against the residents of other state members of our federation.

Restricting entry by non-residents into a job market will make more positions available to residents. It is not difficult to make a case to a sympathetic legislature, whose members are accountable only to residents, that residents are deserving of protection because some of them are unemployed. But the universality of this condition is itself a reason why it is impermissible as a justification in privileges and immunities analysis. If every state could exclude or severely limit non-resident workers because some of its residents were unemployed our country would be "little more than a league of states" rather than "the Union which now exists." Paul v. Virginia, 75 U.S. 168, 180, 19 L.Ed. 357, 360 (1869). Such a result would run strongly counter to the policy of national economic unity on which the privileges and immunities clause is based. The result would not be much better if the power to exclude non-resident

workers were limited to those states with above average unemployment. Many states fit that category and many of the others, no doubt, have particular industries in which a case for protection can be made.

F. Relationship Between the Statute and its Purpose.

The preferential hire statute involved in Hicklin was struck down because, among other reasons, the statute was too broad. It applied not only to unemployed residents or residents enrolled in job training programs, but to all residents whether employed or unemployed, well trained or poorly trained. The Court observed that less restrictive alternatives were available:

> A highly skilled and educated resident who has never been unemployed is entitled to precisely the same preferential treatment as the unskilled, habitually unemployed Arctic Eskimo enrolled in a job-training program. If Alaska is to attempt to ease its unemployment problem by forcing employers within the state to discriminate against non-residents - again, a policy which may present serious constitutional questions - the means by which it does so must be more closely tailored to aid the unemployed the Act is intended to benefit. Even if a statute granting an employment preference to unemployed residents or to residents enrolled in job-training programs might be permissible, Alaska Hire's across-the-board grant of a job preference to all Alaskan residents clearly is not.

Hicklin, 437 U.S. at 527-28, 57 L.Ed.2d at 406.

By giving preferential treatment to residents who do not need it, the present statute suffers from the same vice as that struck down by the United States Supreme Court in Hicklin.[9]

V. PRIOR DECISIONS CONCERNING PREFERENTIAL HIRE STATUTES

In general, preferential hire systems have not fared well in the courts. The leading case is Hicklin, where the United States Supreme Court struck down the Alaska Hire statute.

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9. We made similar observations in State v. Wylie, 516 P.2d 142, 149 (Alaska 1973) (one year residency preference in state employment violates equal protection):

> It does not appear, however, that the employment preference furthers the purpose of reducing unemployment except by deterring the in-migration of persons from other states. The personnel rules in question do not increase the number of available state employment opportunities, but simply limit the universe of persons who may compete for them. To the extent that the personnel rules "lower unemployment" by fencing out competition from other states, the rules impermissibly discriminate against persons who have recently traveled to the state. . . . The personnel rules creating an employment preference are poorly "tailored" to achieve the objective of lower state unemployment. There are certainly available to the state other means for lower unemployment which impose a lesser burden on the constitutionally protected right to interstate travel.

We suggested in a footnote to this statement that "[j]ob training programs, for example, may reduce unemployment without imposing a burden on the right of interstate travel." Id., n.14.

Following Hicklin, the courts of several states have held preferential hire statutes concerning state public works invalid on privileges and immunities grounds. Massachusetts Council of Construction Employers, Inc. v. Mayor of Boston, 425 N.E.2d 346 (Mass. 1981) rev'd on other grounds, White v. Massachusetts Council of Construction Employers, 460 U.S. 204, 75 L.Ed.2d 1 (1983); Neshaminy Constructors, Inc. v. Krause, 437 A.2d 733 (N.J. Super. Ct. Ch. Div. 1981), aff'd 453 A.2d 1359 (N.J. Super. Ct. App. Div. 1982); Salla v. County of Monroe, 399 N.E.2d 909, 423 N.Y.S. 2d 878 (N.Y. 1979), cert. denied, 446 U.S. 909, 64 L.Ed.2d 262 (1980); Laborers Local Union No. 374 v. Felton Construction Co., 654 P.2d 67 (Wash. 1982).

The Supreme Court of Wyoming took a different view in Wyoming v. Antonich, 694 P.2d 60 (Wyo. 1984). It rejected a privileges and immunities challenge to a statute giving an employment preference to Wyoming residents on public works projects. In doing so it relied heavily on the recent case of United Building & Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden, __ U.S. __, 79 L.Ed.2d 249 (1984).[10]

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10. Camden involved a municipal ordinance of the City of Camden, New Jersey, which established as a "goal" with which contractors must make a good faith effort to comply that at least forty percent of the employees of contractors and subcontractors working on city construction projects be Camden residents. The

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We do not read Camden as casting much new light on the present case. The primary issue in Camden, and certainly the most controversial, was whether a municipal ordinance which discriminated against in-state residents as well as out-of-state residents was subject to privileges and immunities scrutiny. Id. at ____, 79 L.Ed.2d at 262 (Blackmun, J., dissenting). The Court did not rule on the question of whether the discrimination was justified by conditions in Camden, or whether the remedy contained in the ordinance was sufficiently closely directed to curing those conditions. It would thus be unwarranted to conclude that the Court approved of Camden's system of discrimination.

Furthermore, the differences between the local hire act here and the ordinance in Camden are noteworthy. As the findings of the trial court indicate, the Alaskan economy is a dynamic and

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New Jersey Supreme Court had sustained the ordinance against a privilege and immunities challenge because it was not aimed primarily at out of state residents; instead it discriminated against all non-residents of the city, regardless of their state of residence. 443 A.2d 148 (N.J. 1982). The United States Supreme Court reversed the New Jersey court on this point, and went on to hold that a non-resident's interest in public works employment was "fundamental," thus subject to protection under the privilege and immunities clause. ___ U.S. at ____, 79 L.Ed.2d at 259-61. The City also contended that the ordinance was justified in order to cure high unemployment and arrest a sharp decline in population. The Court found it impossible to evaluate these justifications as no trial had been held. The case was therefore remanded to the New Jersey courts for further action. ___ U.S. at ___, 79 L.Ed.2d at 261-62.

growing one, property values are increasing, and Alaska's population is expanding rapidly. In contrast, in Camden the city claimed that it was in a condition of decay, with property values eroding, population sharply declining, and unemployment "spiralling." Id. at ___, 79 L.Ed.2d at 261. While Alaska's unemployment is chronically high due in large part to unique conditions in rural areas, the economy of the state does not seem remotely comparable to the picture of "grave economic and social ills" suggested in Camden. In addition, it appears that the discrimination effected by the Alaska statute is greater than that in Camden. Public works account for the majority of commercial construction activity in Alaska. While the opinion does not indicate whether the same is true in Camden, the exclusion mandated by our statute - 90% to 100% resident workers required - is far more absolute than that in the Camden ordinance. As presented to the Court, the ordinance contained only a goal, not a requirement, that 40% of workers on public works construction projects be residents. For these reasons, unlike the Wyoming Supreme Court in Antonich, we do not regard Camden as precedent supporting approval of our local hire law.

One other case is instructive. It is Sugarman v. Dougall, 413 U.S. 634, 37 L.Ed.2d 853 (1973), which involved a New York statute which precluded non-citizens of the United

States from holding competitive civil service positions.[11] The court held the statute invalid under the equal protection clause of the 14th Amendment.[12] One justification offered for the statute was an economic benefits theory which is similar to the reduction in unemployment rationale, and is relevant to the factor of market participation as well.[13] The argument was that the state had a "special public interest" in confining public employment to its citizens, based on its interest in using state resources for the advancement and profit of members of the state. Id. at 643-44, 37 L.Ed.2d at 860-61. The Court rejected this argument, finding that it was rooted in the discredited concept that constitutional rights turn on whether a government benefit is characterized as a "right" or "privilege." Id.

In the final section of the Sugarman opinion the Court suggested the kinds of discriminatory practices against aliens

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11. The competitive class included all positions for which it was practicable to determine merit and fitness by a competitive examination and included "nearly the full range of the work tasks, that is, all the way from the menial to the policy making." 413 U.S. at 640, 37 L.Ed.2d at 858.

12. See Tribe, supra n.8.

13. In a case following Sugarman, C.D.R. Enterprises v. Board of Education of the City of New York, 412 F. Supp. 1164 (1967), summarily aff'd sub nom. Lefkowitz v. C.D.R. Enterprises Limited, 429 U.S. 1031, 50 L.Ed.2d 742 (1977), the reduction in unemployment rationale was expressly rejected as insufficient as a justification for discrimination against resident aliens and U.S. citizens who had not been residents of New York for at least 12 months.

which are permissible. Id. at 646-50, 37 L.Ed.2d 862-64. The Court did not distinguish between alienage in the non-state resident or non-United States citizen senses, and referred to authorities which concerned alienage only of non-state residents. The Court noted that alienage could be a bar to public employment if the statute was based on legitimate state interests relating "to qualifications for a particular position or to the characteristics of the employee."[14] Id. at 646-47, 37 L.Ed.2d at 862.

Sugarman lends support to the conclusion we have reached in the present case for two reasons. The first is that

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14. The Court also stated that "in an appropriately defined class of positions" citizenship could be required as a qualification for office.

> "[E]ach state has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen." Such power inheres in the State by virtue of its obligation, already noted above, "to preserve the basic conception of a political community." And this power and responsibility of the State applies, not only to the qualifications of voters, but also to persons holding state elective or important nonelective executive, legislative, and judicial positions, for officers who participate directly in the formulation, execution, or review of broad public policy perform functions that go to the heart of representative government. There . . . is "where citizenship bears some rational relationship to the special demands of the particular position."

Id. at 647, 37 L.Ed.2d at 862-63 (citations omitted).

it rejects the argument that the state's interest in restricting the resources of the state for the advancement and profit of the members of the state entitles the state to discriminate regarding the employment of aliens. The second is that it suggests that the state may restrict the employment of aliens only for reasons which are much narrower than those used in the present case.

VI. MISCELLANEOUS ISSUES

The appellees also argue that Francis lacks standing because he did not prove that he was dismissed because he was a non-resident. The evidence on this point, although circumstantial, is adequate to sustain the trial court's finding that Francis lost his job because he was not a resident. The appellees also argue that Francis is a resident in fact. This point is frivolous. Not only does the evidence support a finding of non-residency, the state admitted non-residency in its answer. Appellees further contend that Francis lacks standing because injunctive relief will do him no good. This point, too, is frivolous, for it ignores his claim for damages and for declaratory relief.

In view of our decision, it is unnecessary to address Francis's further arguments that the local hire statute violates the equal rights clause of article I, section 1 of the Alaska Constitution and the equal protection and privileges and

immunities clauses of the Fourteenth Amendment to the United States Constitution.

VII. CONCLUSION

Our federal constitution contains a number of provisions designed to protect legally those who lack the power or influence to protect themselves politically. It also manifests a strong commitment to free trade and an aversion to economic protectionism. The privileges and immunities clause combines both of these themes and the local hire act is in substantial conflict with them. For the reasons stated we AFFIRM the judgment of the superior court declaring that the act violates the privileges and immunities clause of article IV, § 2 of the United States Constitution.

BURKE, Justice, concurring.

I concur in the determination that Alaska's "local hire" law[1] violates the Privileges and Immunities Clause of the Constitution of the United States,[2] for the reasons stated in the opinion of the court, authored by Justice Matthews. In my judgment, however, we should decide this case on an independent ground. Thus, as Francis urges us to do in one of his alternative arguments, I would hold the local hire law invalid upon the ground that it violates the clear and unambiguous language of article I, section 1 of the Alaska Constitution.[3]

When called upon to determine the constitutionality of an Alaska statute under both the state and federal constitutions, it is my belief that this court should consider first the requirements of the Alaska Constitution. Shafer v. Vest, 680 P.2d 1169, 1172 (Alaska 1984) (Burke, C.J., concurring). Although this approach has been criticized by some, it is the one favored by a number of respected judges and legal commentators, whose reasons appear far more persuasive to me than do those of the persons in the opposite camp. See R.F. Utter, Freedom and

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1. AS 36.10.

2. U.S. Const. art. IV, § 2.

3. Article I, section 1 of the Alaska Constitution provides, in part, "that all persons are equal and entitled to equal rights, opportunities, and protection under the law."

Diversity in the Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491 (1984). In any event, it is the approach that I would employ in the case at bar, for the following reasons.

A decision by this court that the local hire law violates the Alaska Constitution would bring this case to an immediate end, since it has long been held that it is beyond the power of the United States Supreme Court to review a state court's interpretation of its state constitution, "as long as the state ground is independent of any federal ground and is adequate to support the judgment." Id. at 505, citing Michigan v. Long, 463 U.S. 1032, 77 L.Ed.2d 1201, 103 S.Ct. 3469 (1983) and Fox Film Corp. v. Miller, 296 U.S. 207, 80 L.Ed. 158, 56 S.Ct. 183 (1935). The majority opinion, however, leaves the final result still uncertain.

Given the understandable popularity of local hire measures in Alaska, it is a foregone conclusion that state officials will be under considerable pressure to seek review of our determination of the federal question by the final arbiter of such disputes, the United States Supreme Court. Should the advocates of local hire prevail in that forum, it will still be necessary for this court to decide whether the present statute

3011

violates the Alaska Constitution. Thus, the ultimate outcome could remain unsettled until there is a second decision by this court. Rather than expose the parties and the people of this state to such uncertainty, and the added cost of future litigation, I think we should decide this critical issue of state law here and now.

Another reason for us to examine the requirements of the Alaska Constitution is the almost certain fact that the state legislature will be asked to enact new local hire legislation, after the announcement of our decision. The main difficulty that the legislature faces, as I see it, is the clear and unambiguous statement contained in our state constitution, "that all persons are equal and entitled to equal rights [and] opportunities." Alaska Const. art. I, § 1 (emphasis added). The fact that it may be possible to draft a statute that would satisfy the requirement of the United States Constitution does not mean that the same statute will pass muster under this or some other provision of the Alaska Constitution. It is important, I think, to make this clear to the people of this state and their elected representatives.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM February 17, 1986

SUBJECT: Sectional Analysis of SSSB 271 (Resident hire under certain leases and agreements on state lands)

TO: Senator Joe Josephson

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have requested a sectional analysis of SSSB 271.

Section 1 adds a chapter to the Public Lands title.

Sec. 38.45.010 declares that the state policy for development of natural resources includes providing employment opportunities in natural resource development projects to qualified residents.

Sec. 38.45.020 makes legislative findings about unemployment in the state and the need for a resident employment preference, and incorporates the findings made as AS 36.10.005 by ch. 69 SLA 1985 and Department of Labor's recent report.

Sec. 38.45.030 limits eligibility for a hiring preference under the chapter to residents who are unemployed, underemployed or marginally employed, or have completed a job training program..

Sec. 38.45.040 requires employers (defined in Sec. 38.45.100) to meet the resident hiring requirements established by the commissioner of labor. Subsection (b) directs the commissioner of labor to determine the amount of work subject to the resident hiring preference.

Subsection (c) establishes a 50% preference for residents of areas determined by the commissioner of labor to be economically distressed. Subsection (d) sets out the standards

for economically distressed areas, based on average annual family income, and requires a finding that employment of workers who are not residents of the area contributes to the unemployment of area residents.

Subsection (e) establishes that the preference under AS 44.33.285 for residents of an area impacted by an economic disaster supercedes the preference under the rest of the section.

Subsection (f) directs the commissioner of natural resources to incorporate into leases, unitizations agreements and renegotiations of leases or agreements provisions requiring compliance with the chapter and authorizing penalties under Sec. 38.45.080.

Subsection (g) requires the Department of Labor to assist employers to find qualified residents who are seeking employment. It also permits the department to approve the hiring of residents not eligible for preference and nonresidents if there are insufficient eligible, qualified, available residents.

Sec. 38.45.050 requires employers who are subject to the chapter to report to the commissioner of labor as the commissioner requires.

Sec. 38.45.060 applies the chapter to all natural resource projects on state land and directs the Department of Labor to determine the resident hiring preference for each project, limited to employment directly for an employer.

Sec. 38.45.070(a) directs the Department of Labor and the Department of Natural Resources to adopt regulations including regulations to prohibit discrimination against qualified residents in employment. The Administrative Procedure Act applies except as provided in subsection (b).

Subsection (b) states that the employer is the judge of the work qualifications of applicants. An applicant for employment who has been rejected or an employee who has been terminated may appeal to the Department of Labor. Under subsection (c), if the Department of Labor finds that an employer has willfully failed to comply with the chapter, the commissioner may certify the finding to the Department of Natural Resources.

Sec. 38.45.080 sets out penalties. Under subsection (a), the Department of Labor may require an employer who rejects a qualified applicant or terminates a qualified employee in violation of the chapter to pay the applicant or employee three times the amount of wages lost. The decision may be appealed to the superior court.

Subsection (b) permits the Department of Natural Resources to impose a variety of penalties on an employer certified by the Department of Labor to be in willful noncompliance with the chapter. Subsection (c) limits how the penalties apply to some lessees.

Sec. 38.45.090 permits either department to seek injunctive relief against a person who fails to comply with the chapter. The Department of Natural Resources may seek injunctive relief to enforce penalties.

Sec. 38.45.100 defines "employer," "natural resource project on state land," "qualified resident," and "resident."

Section 2 limits application of the chapter to leases, contracts, and agreements entered into after the effective date of the Act and also applies the Act to leases, contracts, and agreements entered before the effective date if a renegotiation leads to a major change to the duties of a party.

Section 3 is an immediate effective date.

If I may be of further assistance, please advise.

TBC:mkr
M3:041

Table III-3
Labor Force by State
(In Thousands)
1984

	Civilian Labor Force	Employment	Unemployment Number	Unemployment Rate
United States	111,550	100.834	10.717	9 6
Northeast	23.958	22.321	1.638	6 8
New England	6.555	6.237	319	4 9
Connecticut	1.672	1.595	77	4 6
Maine	552	518	34	6 1
Massachusetts	3.051	2.906	145	4 8
New Hampshire	520	498	22	4 3
Rhode Island	490	464	26	5 3
Vermont	269	255	14	5 2
Middle Atlantic	17.403	16.084	1.319	7 6
New Jersey	3.829	3.593	236	6 2
New York	8.089	7.505	584	7 2
Pennsylvania	5.487	4.988	499	9 1
North Central	28.777	26.354	2.423	8 4
East North Central	20.083	18.201	1.882	9 4
Illinois	5.604	5.093	511	9 1
Indiana	2.627	2.401	226	8 6
Michigan	4.359	3.971	488	11 2
Ohio	5.099	4.618	481	9 4
Wisconsin	2.394	2.198	176	7 3
West North Central	8.694	8.152	542	6 2
Iowa	1.417	1.317	100	7 0
Kansas	1.197	1.134	63	5 2
Minnesota	2.229	2.088	141	6 3
Missouri	2.379	2.207	172	7 2
Nebraska	798	763	35	4 4
North Dakota	327	310	17	5 1
South Dakota	346	331	15	4 3
South	38.046	35.293	2.754	7 2
South Atlantic	18.853	17.627	1.226	6 5
Delaware	308	289	19	6 2
District of Columbia	320	291	29	9 0
Florida	5.099	4.777	322	6 3
Georgia	2.760	2.594	166	6 0
Maryland	2.244	2.123	121	5 4
North Carolina	3.033	2.828	205	6 7
South Carolina	1.480	1.375	105	7 1
Virginia	2.841	2.698	143	5 0
West Virginia	769	653	116	15 0
East South Central	6.807	6.141	666	9 8
Alabama	1.794	1.594	200	11 1
Kentucky	1.717	1.557	160	9 3
Mississippi	1.074	958	116	10 8
Tennessee	2.223	2.033	190	8 6
West South Central	[illegible]	11.525	862	7 0
Arkansas	[illegible]	952	93	8 9
Louisiana	[illegible]	746	194	10 0
Oklahoma	[illegible]	[illegible]	109	7 0
Texas	7.[illegible]	[illegible]	466	5 9

Table III-3
Labor Force by State
(In Thousands)
1984
(Continued)

	Civilian Labor Force	Employment	Unemployment Number	Unemployment Rate
West	22,721	21,000	1,721	7.6
Mountain	6,111	5,732	379	6.2
Arizona	1,433	1,362	71	5.0
Colorado	1,707	1,611	96	5.6
Idaho	464	431	33	7.2
Montana	405	375	30	7.4
Nevada	496	457	39	7.8
New Mexico	628	581	47	7.5
Utah	721	674	47	6.5
Wyoming	254	238	16	6.3
Pacific	16,610	15,268	1,342	8.1
Alaska	245	220	25	10.2
California	12,503	11,362	972	7.8
Hawaii	473	446	27	5.6
Oregon	1,336	1,211	125	9.4
Washington	2,054	1,860	194	9.5

Source: U.S. Department of Labor, Bureau of Labor Statistics.

Table III-6
Labor Force By Region and Census Area

	Labor Force			Unemployment			Rate			Employment		
	1980	1981	1982	1980	1981	1982	1980	1981	1982	1980	1981	1982
Alaska Statewide	188000	196000	211000	18000	18000	21000	9.6	9.2	10.0	170000	178000	190000
Anchorage-MatSu Region	92529	98208	108564	7275	7147	8615	7.9	7.3	7.9	85254	91061	99949
Anchorage Borough	83203	89393	98303	5850	5946	7202	7.0	6.7	7.3	77353	83447	91101
MatSu Borough	9326	8816	10261	1425	1201	1413	15.3	13.6	13.8	7901	7615	8848
Gulf Coast Region	21894	21815	23236	2767	2647	3257	12.6	12.1	14.0	19127	19168	19979
Kenai Peninsula Bor.	12934	13215	14283	1835	1738	2177	14.2	13.2	15.2	11099	11477	12106
Kodiak Island Borough	4838	4962	5308	475	482	604	9.8	9.7	11.4	4363	4480	4704
Valdez-Cordova	4122	3639	3645	457	427	476	11.1	11.7	13.1	3665	3212	3169
Interior Region	27637	28815	31077	3244	3113	3761	11.7	10.8	12.1	24393	25702	27316
Fairbanks North Star Borough	21949	23163	25141	2450	2446	3077	11.2	10.6	12.2	19499	20717	22064
Southeast Fairbanks	2362	2427	2546	312	273	287	13.2	11.2	11.3	2050	2154	2259
Yukon-Koyukuk	3326	3225	3391	482	394	398	14.5	12.2	11.7	2844	2831	2993
Northern Region	5997	6912	7458	845	798	792	14.1	11.5	10.6	5152	6114	6666
Kobuk	1918	2113	2377	319	278	276	16.6	13.2	11.6	1599	1835	2101
Nome	2542	2824	3117	378	331	327	14.9	11.7	10.5	2164	2493	2790
North Slope Borough	1538	1976	1965	148	190	189	9.6	9.6	9.6	1390	1786	1776
Southeast Region	29881	30077	30345	2698	3216	3450	9.0	10.7	11.4	27183	26861	26895
Haines Borough	986	952	937	137	125	134	13.9	13.1	14.3	849	827	803
Juneau Borough	10631	10569	11242	763	778	928	7.2	7.4	8.3	9868	9791	10314
Ketchikan Gateway Borough	6289	6891	6661	571	839	817	9.1	12.2	12.3	5718	6052	5844
Prince of Wales-Outer Ketchikan	2198	2310	2245	267	378	376	12.1	16.4	16.7	1931	1932	1869
Sitka Borough	4267	3963	4012	324	359	490	7.6	9.1	12.2	3943	3604	3522
Skagway-Yakutat-Angoon	2009	1825	1802	252	255	242	12.5	14.0	13.4	1757	1570	1560
Wrangell-Petersburg	3500	3568	3447	384	483	463	11.0	13.5	13.4	3116	3085	2984
Southwest Region	10063	10174	10319	1172	1079	1125	11.6	10.6	10.9	8891	9095	9194
Aleutian Islands	2560	2605	2564	190	165	178	7.4	6.3	6.9	2370	2440	2386
Bethel	3951	4016	4093	595	559	528	15.1	13.9	12.9	3356	3457	3565
Bristol Bay Borough	377	413	407	43	41	48	11.4	9.9	11.8	334	372	359
Dillingham	1545	1485	1563	137	125	133	8.9	8.4	8.5	1408	1360	1430
Wade Hampton	1629	1655	1693	206	189	238	12.6	11.4	14.1	1423	1466	1455

Table III-6
Labor Force by Region and Census Area
(Continued)

	Labor Force		Unemployment		Rate		Employment	
	1983	1984	1983	1984	1983	1984	1983	1984
Alaska Statewide	234000	245000	24000	25000	10.3	10.2	210000	220000
Anchorage-MatSu Region	122510	130147	9825	10635	8.0	8.2	112685	119512
Anchorage Borough	109626	116442	8035	8695	7.3	7.5	101591	107747
MatSu Borough	12883	13706	1790	1940	13.9	14.2	11093	11766
Gulf Coast Region	25380	26277	3486	3370	13.7	12.8	21894	22907
Kenai Peninsula Borough	15756	16262	2395	2283	15.2	14.0	13361	13979
Kodiak Island Borough	5731	5985	559	574	9.8	9.6	5172	5411
Valdez-Cordova	3893	4030	532	513	13.7	12.7	3361	3517
Interior Region	34944	36621	4685	4857	13.4	13.3	30259	31764
Fairbanks North Star Borough	28282	29643	3835	3980	13.6	13.4	24447	25663
Southeast Fairbanks	2812	2920	350	335	12.4	11.5	2462	2585
Yukon-Koyukuk	3850	4058	500	541	13.0	13.3	3350	3517
Northern Region	8142	8233	929	969	11.4	11.8	7213	7264
Kobuk	2600	2639	337	360	13.0	13.6	2263	2279
Nome	3420	3458	401	418	11.7	12.1	3019	3040
North Slope Borough	2121	2135	191	191	9.0	8.9	1930	1944
Southeast Region	32278	32711	3968	4127	12.3	12.6	28310	28584
Haines Borough	1063	1038	172	138	16.2	13.3	891	900
Juneau Borough	12075	12274	1117	1210	9.3	9.9	10958	11064
Ketchikan Gateway Borough	6822	7144	817	1081	12.0	15.1	6005	6063
Prince of Wales-Outer Ketchikan	2497	2448	457	388	18.3	15.8	2040	2060
Sitka Borough	4052	4054	437	404	10.8	10.0	3615	3650
Skagway-Yakutat-Angoon	2121	2010	429	302	20.2	15.0	1692	1708
Wrangell-Petersburg	3649	3743	540	604	14.8	16.1	3109	3139
Southwest Region	10747	11012	1108	1043	10.3	9.5	9639	9969
Aleutian Islands	2583	2636	168	138	6.5	5.2	2415	2498
Bethel	4245	4354	521	502	12.3	11.5	3724	3852
Bristol Bay Borough	419	432	40	40	9.5	9.3	379	392
Dillingham	1729	1803	131	151	7.6	8.4	1598	1652
Wade Hampton	1771	1787	248	212	14.0	11.9	1523	1575

Federal guidelines require the use of unrounded labor force data, adjusted to be consistent with the Current Population Survey (CPS) in formulas used to allocate federal funds. Comparisons between different time periods are not as meaningful as other time series published by the Alaska Department of Labor: because Alaska's CPS sample size is inadequate to accurately indicate monthly changes in level. The sampling errors are random in nature; meaning that the unemployment rates, in any given month, are as likely to be high as frequently as they are low. The official definitions of unemployment, currently in place, exclude anyone who has made no attempt to find work in the four week period up to and including the week that includes the twelfth of each month. Most economists feel that Alaska's bush localities have proportionately more of these discouraged workers.

Table IX-8
Personal Income by Census Division
1983

	Total Personal Income (in Millions of Dollars)	Per Capita Income (Dollars)	Per Capita Income % of National Average	% Change of Total Personal Income from 1982
Alaska	$8,243	$17,225	147	10 0
U.S.	2,734,464	11,687	100	6 2
Aleutian Islands	120	15,067	129	8 0
Anchorage	4,017	19,020	163	10 9
Angoon	8	9,933	85	3 3
Barrow-North Slope	103	21,084	180	12 8
Bethel	105	9,666	83	14 1
Bristol Bay Borough	22	17,422	149	8 9
Bristol Bay	52	11,118	95	15 9
Cordova-McCarthy	38	15,027	129	3 4
Fairbanks	1,238	19,198	164	9 2
Haines	29	14,144	121	10 0
Juneau	473	20,127	172	9 5
Kenai-Cook Inlet	408	14,814	127	7 8
Ketchikan	228	17,786	152	7 2
Kobuk	56	10,716	92	6 1
Kodiak	169	16,050	137	11 5
Kuskokwim	22	7,413	63	15 2
Matanuska-Susitna	360	13,395	115	14 3
Nome	86	11,779	101	13 3
Outer Ketchikan	20	11,967	102	17 3
Prince of Wales	41	12,949	111	6 8
Seward	54	15,809	135	6 6
Sitka	122	15,269	131	1 5
Skagway-Yakutat	44	15,336	131	12.9
Southeast Fairbanks	65	11,001	94	7 2
Upper Yukon	22	12,229	105	6 0
Valdez-Chitina-Whittier	113	17,222	147	0 2
Wade Hampton	32	6,017	51	5 0
Wrangell-Petersburg	116	17,252	148	10 3
Yukon-Koyukuk	80	13,982	120	7 9

Source: U.S. Department of Commerce, Bureau of Economic Analysis.

Note: These personal income figures are not directly comparable to those contained in Table IX-9

Updated on 18-Mar-86

Census Division	1983 Per Capita Income	Percent of U.S.	Rank
Barrow - North Slope	21,084	180.4	1
Juneau	20,127	172.2	2
Fairbanks Northstar	19,198	164.3	3
Anchorage	19,020	162.7	4
Ketchikan	17,786	152.2	5
Bristol Bay Borough	17,422	149.1	6
Wrangell - Petersburg	17,252	147.6	7
Valdez - Chitina - Whittier	17,222	147.4	8
Kodiak	16,050	137.3	9
Seward	15,809	135.3	10
Skagway - Yakutat	15,336	131.2	11
Sitka	15,269	130.6	12
Aleutian Islands	15,067	128.9	13
Cordova McCarthy	15,027	128.6	14
Kenai - Cook Inlet	14,814	126.8	15
Haines	14,144	121.0	16
Yukon - Koyukuk	13,982	119.6	17
Matanuska - Susitna	13,395	114.6	18
Prince of Wales	12,949	110.8	19
Upper Yukon	12,229	104.6	20
Outer Ketchikan	11,967	102.4	21
Nome	11,779	100.8	22
Bristol Bay	11,118	95.1	23
Southeast Fairbanks	11,001	94.1	24
Kobuk	10,716	91.7	25
Angoon	9,933	85.0	26
Bethel	9,666	82.7	27
Kuskokwim	7,413	63.4	28
Wade Hampton	6,017	51.5	29
Alaska	17,225	147.4	
U.S.	11,687	100.0	

Source: U.S. Dept. of Commerce, Bureau of Economic Analysis
Formatted by Alaska Dept. of Labor, Research and Analysis

Note: Data is on the 1970 Census Divisions. It will be revised by BEA to Census Areas in the future.

Table 1-1
Conversion of 1980 Census Areas to Corresponding 1970 Census Divisions

2-Digit Code	1980 Census Areas	Corresponding 1970 Census Divisions
Northern Region		
01	North Slope Borough	Barrow-North Slope
02	Kobuk	Kobuk
03	Nome	Nome
Interior Region		
04	Yukon-Koyukuk	Yukon-Koyukuk + (part) Kuskokwim + (part) Upper Yukon
05	Fairbanks Borough	Fairbanks Borough
06	Southeast Fairbanks	Southeast Fairbanks + (part) Upper Yukon
Southwest Region		
07	Wade Hampton	Wade Hampton
08	Bethel	Bethel + (part) Kuskokwim
09	Dillingham	Bristol Bay Division
10	Bristol Bay Borough	Bristol Bay Borough
11	Aleutian Islands	Aleutian Islands
Anchorage Region		
12	Matanuska-Susitna Borough	Matanuska-Susitna Borough
13	Anchorage Borough	Anchorage Borough
Gulf Coast Region		
14	Kenai Peninsula Borough	Kenai-Cook Inlet + Seward
15	Kodiak Island Borough	Kodiak Island Borough
16	Valdez-Cordova	Cordova-McCarthy + Valdez-Chitina-Whittier
Southeast Region		
17	Skagway-Yakutat-Angoon	Skagway-Yakutat + Angoon
18	Haines Borough	Haines Borough
19	Juneau Borough	Juneau Borough
20	Sitka Borough	Sitka Borough
21	Wrangell-Petersburg	Wrangell-Petersburg
22	Prince of Wales-Outer Ketchikan	Prince of Wales-Outer Ketchikan
23	Ketchikan Borough	Ketchikan Borough

Extracted from "Alaska Planning Information"

MEMORANDUM

April 8, 1986

TO: Arliss Sturgulewski
Frank Homan

FROM: Bill Bennett

RE: Comments Concerning CSSSSB 271 (RES)

As promised, I hereby submit my own comments concerning the above proposed legislation.

1. As you have noted, the proposal will have little impact upon the broad general issue of "outside hire." By its terms, it will only apply to a very small segment of the Alaskan economy. This is particularly true since it affects only prospective leases.

2. The costs of implementing and enforcing this legislation will necessarily be substantial. The guaranteed litigation, either through the administration hearing process and/or court proceedings, will by themselves cost the State far more than the projected $500,000. I further question what costs have been attributed, if any, to the undertakings required of the Department of Labor and Department of Natural Resources to define the various economic zones and to assist employers in securing "preference employees."

3. With respect to Section 38.45.030, I submit that these provisions, as well as those with respect to the hearing process should a claim be made that a non-preferenced employee was hired, necessarily will require that the Department of Labor and/or the courts to determine whether an individual applicant was or was not qualified for employment. The language of Section 38.45.035 is therefore fundamentally flawed and misleading. Without language that provides that the employer is the sole and absolute judge of whether an individual is qualified, any employer determination in this regard must necessarily be subject to administrative or judicial second guessing.

4. By the terms of Section 38.45.030 and the remainder of the bill, the bill requires an employer to hire minimally qualified applicants even though the employer may have applicants who are far more qualified but do not enjoy a preference.

5. Section 38.45.060 requires an individual to be eligible for preference to, among other things, certify his/her eligibility. As a practical matter, I wonder whether this will work to the detriment of those in bush communities who are less likely to meet the requirements of the legislation. The section further allows an individual to be registered at a "local" hiring hall. The term local is not defined and certainly means many different things depending on the given union. For example, I believe (although I may be mistaken) that one or more unions include their Seattle hiring hall as part of the Alaska district.

6. Section 38.45.060(b) requires that an employer shall certify that persons employed under a preference are eligible for the preference. No attorney in his or her right mind would ever counsel an employer to so certify. The language is sufficiently broad to imply that an employer must conduct its own investigation and leaves an employer who fails to properly certify, for whatever reason, subject, at a very minimum, to an intensive investigation by the Department of Labor and/or the Department of Natural Resources.

7. Sections 38.45.070 and .080 seem to create two different "preference areas." It is unclear why there is a necessity for two different areas and each section gives the Commissioner of Labor virtually unfettered discretion to determine not only what those areas are to be but also what criteria will be relied upon to determine those areas.

8. The terms of Sections .070 and .080 ensure that an employer will be required to hire employees based upon determinations made by the Commissioner of Labor rather than upon the sound business needs made by the needs of an individual project. If I read Section 38.45.070(a) and (b) together correctly, it appears that the preference for underemployed areas extends only to that amount of work which the Commissioner of Labor determines shall be covered. Conversely, under .080, the preferenoe for economically distressed areas appears to be "at least 50% of employment." I therefore conclude that in each instance, a substantial amount of work will not be covered by the preference. (This may be an incorrect reading, however, since 38.45.070(a) by itself suggests that the preference applies to all work.)

9. Under Section 38.45.070(c) the term substantial for Sections (1) and (2) are undefined as they apply to the national rate of unemployment or the number of residents in a given area. Once again, this gives virtually no guidance to the Commissioner of Labor or to any business trying in good faith to comply with the State's requirements.

10. Section 38.45.100 does maintain confidentiality of material, but that confidentiality is suspect when the information gathered can be shared between State departments. I believe that this "sharing of information" is unnecessary and should be eliminated.

11. Section 38.45.110 provides two different methods by which an employer can be subjected to the Department of Labor's hearing process. Section .110(a) provides that such hearings may be held upon complaint by a rejected or terminated employee. Alternatively, under Section .110(b) the Department of Labor can conduct its own investigations upon its own motion. There does not appear to be any statute of limitation applicable to this latter proceeding, nor any threshold finding required of the Department of Labor before such investigations and hearings are initiated. In both proceedings, there is a substantial cost which any employer will incur, regardless of whether there is or is not a violation of any local hire provision.

12. Others have spoken at length with respect to the penalty provisions of this bill. They are simply not in keeping with any attempt to create a bill which will encourage local hire.

13. Under the terms of this legislation, I wonder whether a party holding a lease from the State is responsible for any sublessee's conduct. Specifically, can a sublessee's failure to follow the terms of this local hire provision cause a lessee with the State to be subject to the penalties set forth herein?

14. If the desire is to create a truly meaningful local hire law and to meet the needs of all of the citizens of the State of Alaska, I suggest that this bill is doomed to failure. As you pointed out, it applies to only prospective leases. Accordingly, even for the very few that it would ultimately effect, its provisions would not be felt for many years hence. It is a cumbersome and unnecessary piece of anti-business legislation. Instead of encouraging local hire, it will only encourage fraud. The bill does not address, for example, the very real problem of those who are hired as local residents and

then choose subsequently to leave the State. Before any legislation is adopted, there must be solid statistical data upon which the Legislature can rely. I submit that that data has not yet been obtained. By separate memo I will submit my thoughts on legislation which I believe can be applied fairly and uniformly to all Alaskan employers and which will not run afoul of constitutional prohibitions.

Thank you for the opportunity to outline some of my concerns.

W.D.B.

/cac

FRONTIER COMPANIES OF ALASKA INC.

April 8, 1986

Members of the 14th Legislature
of the State of Alaska
Sponsors of Senate Bill No. 271
Senate Members, of the Resources Committee
Juneau, AK

Dear Members of the 14th Legislature:

Frontier Companies of Alaska, Inc. offers this testimony before the Senate Resources Committee to assist its members in concluding that Senate Bill No. 271 should receive a "do not pass" recommendation. This testimony comes from more than merely one member of The Alliance. It eminates from your constituents - Alaskans within the Frontier Group of companies, representing six Alaskan companies with offices in Anchorage, Fairbanks and the North Slope Borough.

The Frontier Group of companies are composed of people, in excess of 2,000 during a normal working year. The majority of these Frontier employees are Alaskans, union and non-union; blue collar and white collar; men and women representing every social strata -- none of whom to our knowledge support bills such as Senate Bill No. 271.

The terms of Senate Bill No. 271 establish it not as a resident hire bill but a preferential resident hire bill. It would allow the unemployed, underemployed or marginally employed resident to effectively displace residents active in the work place, who may have long established work histories with Alaskan employers. Indeed, a worst case scenario under the terms of this Bill would allow a non-Alaskan resident to move to an underemployed or economically distressed area, as designated by the Commissioner of Labor, qualify as a resident and gain an employment preference over long time Alaskan workers.

The establishment of the so-called underemployed or economically distressed areas is left to the discretion of one person - the Commissioner of Labor. This award of discretionary power, with no checks or balances articulated within SB 271 is equivalent to the Governor's constitutionally granted power to declare disaster areas in response to devastating natural phenomena. This is undoubtedly the most substantial grant of power to an appointed official in state government, with the Commissioner subject to no penalty for abuse of power.

P.O. Box 101616 • Anchorage, Alaska 99510 • Telephone 907-349-5944 • 6700 Arctic Spur Road

On the contrary, the civil and criminal penalties for both potential employee and employer alike would suggest that the Frontier Companies, its employees and other Alaskans have at some point been branded as the enemy of the Legislative body. Yet, it is we who have hired Alaskan residents for 30 years and confined our operations to the State of Alaska. The criminal penalties for noncompliance would be adjudicated at a level just below murder. The civil penalties make the pursuit of work prohibitive, whether or not actual violation occurs, because the assessment of risk involved will require additional insurance coverage that most likely will be unattainable.

The charge that all Legislators accept upon election is to represent the opinions of its constituents and be advocates in the transformation of those opinions into government action. Implicit within that charge is the requirement that government leaders remain in contact with their constituents and not be pursuaded to implement law such as SB 271 that is inarticulate in its drafting, medieval in its punishment, contradictory in its content, unfair and expensive in its administration, and ultimately self-defeating. Notwithstanding the fact that the declining tax dollars which all concerned are attempting to protect and enhance, would be invested in the determination of the constitutionality of a law that is doomed to join its predecessors as unconstitutional. The approach that should be pursued by Legislators and will continue to encourage employment of Alaskan residents is the implementation of incentive-based means.

SB 271 has become one more candidate in a continuing unsuccessful attempt at passage of legislation for politics sake. Based on our beliefs -- the beliefs of your constituents -- we submit it is bad politics and potentially bad law and should receive a do not pass recommendation in your committee report.

Respectfully submitted,

FRONTIER COMPANIES OF ALASKA, INC.

C. Larry Walker

C. Larry Walker
President

CLW/gj

THE ALLIANCE
P.O. Box 100100 / Anchorage, Alaska 99510 / (907) 562-0100

TESTIMONY

OF
THE

ALASKA SUPPORT - INDUSTRY ALLIANCE

ON

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL No.271

Presented

by

Chuck Becker
Vice President for
Policy

Before the

SENATE RESOURCES COMMITTEE
ALASKA STATE LEGISLATURE

April 9, 1986

Goodafternoon. My name is Chuck Becker. I am before you today representing the Alaska Support-Industry Alliance. The Alliance, as many of you know, is a coalition of some 250 businesses throughout Alaska which provide equipment, supplies and services, directly and indirectly, to Alaska's petroleum and mining industries.

Members of the Alliance are practioners and supporters of local hire. In a letter to this Committee through Chairman Sturgulewski dated May 3, 1985, nearly a year ago, we transmitted a copy of a resolution in support of local hire adopted by our members and have subsequently fdlowed up again with a revised resolution approved by Alliance members earlier this year vigorously supportive of the concept of local hire. I would appreciate your indulgence while I refresh you memory on our position:

"The unemployed Alaskan represents a serious social and economic problem to the state which must be solved. Employment strategies targeted at the jobless must be devised and implemented cooperatively by government and industry working toward this common goal. Alaskans who are ready, willing and able to work must be given that opportunity."

Legislation which would employ mandates and sanctions designed to force Alaska businesses to hire Alaskans as a method to solve the problem of unemployment is counterproductive. Typically such an approach has been found to be an assault on the fundamental laws of our nation. Alaskans demand a more thoughtful approach towards resolution of the unemployment problem from its leaders of government; an approach which seeks resolution by creating an environment designed to generate new and expanded business opportunities.

"A vibrant economy is the best local hire policy."

"The entire Alaska business community must learn of the already existing incentives to hire an Alaskan worker. The spirit of independence, of self-sufficiency and of self-motivation pervades the Alaskan workforce unlike any other. An employer cannot put a better worker to work than an Alaskan."

"The Alliance recommends an effort be launched by government and business, in a spirit of cooperation, to solve the problem of unemployment in Alaska and to promote the realities associated with the assertion... Hire Alaskans; it's good business!"

Many of you have Alliance bumper stickers bearing that motto posted in your offices. We are pleased you concur.

In our communication with this Committee last year, we also took the opportunity to offer what we hoped would be constructive criticism of last year's version of SB 271. We encouraged you to accentuate positive aspects and to eliminate some of the more onerous tonalities contained in the draft bill. We asked you to consider the constitutional defensibility of the bill and to examine its impact on Equal Employment Opportunity statutes. We urged that the committee devote time to an analysis of the negative consequences stemming from enactment of penalties as severe as those set forth - shutting down business operations, blacklisting, fines which appear to punish rather than elicit compliance. We suggested that this body work to foster a positive business climate in Alaska and pointed out that SB 271 as drafted would fail to achieve that end.

In three separate work sessions beginning last Thursday and continuing through Friday, as many as 35 and as few as 10 representatives of firms affiliated with the Alliance reviewed and analyzed the efforts

of the legislature to try to achieve meaningful initiatives on local hire as one way to solve Alaska's growing unemployment problem. Please understand that these men and women are working day and night trying to keep their businesses afloat during this exceptionally difficult economic decline touching each of us.

Without exception, members of the Alliance have concluded that organizationally and individually, we must oppose all bills trying to legislate local hire which have been introduced to date. SB 463 which some have rather crudely termed the "spread-eagle-at-the-airport bill", makes the local hire initiative a laughing stock among Alaskans and our fellow Americans in the Lower 48. SB 271 which would make it a class B felony to try to pass for an Alaskan while searching for a job to feed a man or woman's family can only be described as a Catch 22 with draconian sanctions. Bills using state funds as an incentive for local hire cannot be considered as huge chunks are taken out of the budgets of our educational systems. And bills over in the other body such as HB 466, cleverly crafted to only gently violate the constitution , are equally unacceptable.

One of our members remarked, "If the Statue of Liberty was standing in Cook Inlet, she'd have a tear in her eye".

We have heard that there are those who are pleased that the bill would impact only 3-5 percent of all employees in Alaska - does that make it all right to violate the constitutionally protected rights of those persons or those firms who are targeted by the bill?

Another businessman looked at the bill before us today and said rightly that it would generate the "Blue/Grey syndrome" in Alaska. That it would pit Alaskan against Alaskan.

That any citizen of the United States should be provided with a certificate from the state or federal government granting that person a disproportionate

advantage in employment opportunities, based not on merit or qualifications, patently vilates the equal rights and equal opportunities constitutionally guaranteed to all Americans. A state registration program handing out green cards which would grant such a preference cannot be condoned.

Can you picture the state,in its misguided local hire attempts, deny preference to a handicapped Vietnam era veteran from Texas trying to find a job so he can feed his family?

The effort to be politically responsive to constituents during this election year has distorted the local hire quest. History teaches us that misdirection often springs from a zealous pursuit of a worthy goal. From religious zeal sprang the Inquisition and from local hire has sprung SB 463, 271 and HB 466.

Bizarre developments have taken place. Can this state afford a so called "hot line" to Prudhoe Bay so workers can call in their gripes to the Labor Department? Perhaps the cook served veal instead of steak and lobster. Perhaps $50,000 a year plus room and board isn't enough. Do you suppose the state will extend the same courtesies to the employees of canneries in Bristol Bay during the salmon run?

How about HJR 465. Although not a product of this legislature, the bill is law. It requires that each contract awarded by the Dept. of Defense during FY'86 for construction work in Alaska include a provision mandating that the contractor employ Alaska residents. It goes on to say, however, that a worker dispatched by a union should be considered a resident of Alaska. That provision was put into law as a sop to Representatives Aucoin and Dix who were worried that job hunters from their state seeking employment in Alaska might not be able to work this summer if true Alaskans had to be hired.

SB 271 is, on top of all else, an administrative nightmare, conservatively estimated to cost the state a half million dollars. One Labor Department official

who asked not to be identified, said the cost is more like $1 million. Whatever it might cost the state, Alaskan employers whould quickly outspend that amount in administrative expenditures and legal fees.

One cannot help but wonder what our government in Alaska would be like today if, 30 years ago, a local hire policy had been in effect at Sears & Roebuck.

SECTIONAL ANALYSIS OF CS FOR SPONSOR SUBSTITUTE OF SB 271

submitted by
the

ALASKA SUPPORT-INDUSTRY ALLIANCE

Chapter 45

Sec. 38.45.010 No Comment

Sec. 38.45.020

* It would be well to review AS 36.10.005 to assure that the legislative findings are underpinned with irrefutable facts substantiating the conclusions drawn.

Sec. 38.45.030

* "...may request the Dept. of Labor to assist in locating qualified, eligible employees" (sic). Persons to be referred by the Department will not be "employees", they will be persons seeking employment. Given the rapidity with which project mobilization is required in the construction industry, if not also in the timber and mining industries, it would appear that the Department is under no constraints of time in which to comply with the request of an employer. Moreover, since 87 percent of the Alaska Job Service budget originates from the federal government, state law allowing Job Service to discriminate among qualified applicants seeking employment based on length of residency in the state, is apt to result in the loss of federal support for this important public service.

Sec. 38.45.035

* It is unclear if the state shall be a participant in the process which allows an employer to determine and judge work qualifications of applicants for employment. Additionally, are employers allowed the management prerogatives typically available throughout the United States, which allow for ranking candidates for employment based upon experience and quality of skill level of the applicant. Would Alaska employers be required by law to hire an Alaska resident who is demonstrably less experienced and less skilled than a non-resident candidate for the same position?

Sec. 38.45.040

* No Comment

Sec. 38.45.050

* A curious role for the state Attorney General.

Sec. 38.45.060

* Preference is provided to certain persons for employment opportunities yet it is not incumbent upon the preferred person to actively seek employment with employers obligated to employ such persons.

* To receive an employment preference under this section, Alaska residents may register with a "local hiring hall". The term, "local hiring hall" is undefined. Moreover it would appear that the intent of the bill would require open shop contractors to recruit out of union hiring halls.

* If a person is collecting unemployment and an employer offers that person a job at a lower rate of pay than the person had been receiving while employed, the applicant is able to turn down the job offered under current law and would also be able to trigger the hearing and investigatory processes of the State Department of Labor as defined in this chapter.

An employee who declines an offer of a job which pays reasonable wages should not be able to file a complaint against the employer.

* It might be construed that an employer may be held in violation of this law if he or she were to employ non-resident relatives and family friends. This is an employer prerogative which must be retained by all Alaskan employers and constitutes a long standing tradition which has facilitated the development of Alaska.

* Firms with operations in Alaska which also operate outside of Alaska, either on a regional, national or international basis, would not be permitted to transfer into Alaska personnel of those firms which might be required in the Alaska operation.

* No exception is provided in the proposal which exempts key personnel from the residency requirements, e.g. supervisors, managers, lead men, etc.

* Requiring an employer to certify that persons employed under this proposal as residents under the preference are, in fact, eligible for the preference, exposes each employer to the criminal sanctions attendant to the bill in the event an error is made by the employer. To what extent should an employer be required to investigate an applicant who shows up with a preference card given to him or her by the State of Alaska? To what extent must an employer investigate the assertions of prospective employees as to Alaska resident status?

Sec. 38.45.070 - 38.45.080

* Three designations of areas are developed - "Underemployed Areas","Economically Distressed Areas" and Economic Disaster Areas". The proposal provides no reasonable guidance to the Commissioner as to the use of these designations. The Commissioner is, in fact, imbued with powers which should remain the sole prerogative of the Chief

Executive. Administrative abuse of powers granted under these sections is a potential among which is the opportunity to gerrymander areas to disadvantage certain operations. In fact, this section might be construed as to allow individual projects to be singled out for designation under one of the categories.

Are exceptions allowed to the "preference" referred to in these sections?

Since point-of-hire often differs from the actual work area, might an employer be required to open employment offices in remote site locations?

* A firm with a number of projects throughout the state might concievably be required to implement different criteria for each project.

* A work crew employed by a firm could be precluded from being transferred from job site to job site of the employer.

* Affirmative Action Plans of Alaskan employers would be made invalid as this bill is proposed, to the detriment of minorities who have progressed under state and federal civil rights provisions of law.

* It is concievable that an employer with a project in an area designated by the Commissioner as "economically distressed" could be required to lay off 50 percent of his or her workforce to facilitate employment of those persons seeking employment with that employer who hold a preference under this chapter.

* A 30 year employee living in Kenai with his or her family could, as the law is proposed, be displaced by a "30 day wonder" with marginal skill levels.

* These sections could result in bitter competition for employment among Alaskans with the law, as proposed, favoring the unemployed over the gainfully employed Alaskan.

Sec. 38.45.090

* This section requires "lease holders" to bear responsibility for the employment practices of contractors and subcontractors. It might be held under this arrangement that a "joint employer" relationship has been established leading to enormous legal complications. Moreover, a leaseholder can be assessed a fine upwards to $100,000 for actions of a completely independent contractor. The liability insurance premimums required to indemnify and hold harmless leaseholders could concievably force subcontractors into bankruptcy.

Sec. 38.45.100

* This section fails to contain sufficient safeguards to assure protection of privacy of Alaskans and confidentiality of trade secrets of Alaskan businesses. If this chapter is to have criminal sanctions in it at all, those sanctions must be aimed at state employees who might divulge confidential information. Under no circumstances whatever, should confidential information be shared between departments. When the State of Alaska gets into the business of keeping computer files on Alaska residents and Alaska companies and shares that information among Departments, the rights of individual privacy, so jealously pursued and guarded by all Alaskans are grievously threatened.

Sec. 38.45.110

* Granting a 30 day period in which to file a complaint under this chapter, to an employee allows that employee to "lay in the weeds" until the 29th day in order to maximize exposure to the employer. Given the exceptionally generous financial settlements available to aggrieved persons under this proposal, it can be expected that such action might be contemplated by those individuals.

* Seniority systems established by employers in Alaska would be negated.

* Employer prerogative of termination for cause is not exempt from liability under this proposal.

* This section invites abuse of Alaskan employers. Any person who applys for employment with an employer subject to the provisions of this chapter, who is turned down by that employer, is free to call upon the powers of the State Department of Labor to conduct investigations and to convene a hearing on the alleged grievance. It has been pointed out that even an employer with a 100 percent Alaska hire record would be subject to such harassment. The time and legal expense spent in defense of impeccable hiring practices could concievably drive businesses into bankruptcy. Under the best of interpretations given to this chapter, it in no way is conducive to attracting investment in Alaska - investment so critically needed today to create jobs for Alaskans.

* Some members of the Alliance encourage applicants to remain in continued touch with their employment personnel if those job seekers are in the market for employment. These talent banks are kept current by visits from prospective employees who typically sign registers which designate interest and availability. This practice would be quickly abandoned if SB 271 were to become law, forclosing employment opportunities to Alaska residents or, at least, making it substantially more difficult for Alaska residents to obtain employment.

* Subsection (b) of 38.45.110 stands alone, granting enormous investigatory powers to the Department of Labor without building into the law safeguards protecting employer rights.

Sec. 38.45.120 - Sec. 38.45.130

* These sections simply defy logic. That those companies and businesses which have contributed the most to creating the best paying jobs for Alaskans in the state & developing opportunities for all sectors of the Alaska economy, should be subjected to such draconian criminal penalties is unconscionable. These sections make this proposal one of the most anti-business pieces of legislation ever developed in recent memory of any legislative body in the United States.

* An employer caught in the "Catch 22" concepts embodied in this bill could end up paying wages and damages to persons who simply requested employment with his or her firm.

* Leaseholders held to be without fault in actions of their contractors and subcontractors could end up with a penalty of $100,000.

* Up to $200,000 in penalties can be assessed against Alaska employers for each incident developed in this "damned if you do and damned if you don't" bill.

* Employers can be blacklisted in Alaska for three years.

* Major projects critical to the economic development and fiscal welfare of Alaska can be shut down without due process.

* An applicant seeking employment in order to feed and shelter his family can be found guilty of claiming to be an Alaskan if he or she acts before the 30 day waiting period. If convicted, that person would be subject to criminal prosecution and penalties just short of first degree murder, sexual assault and kidnapping. A murderer or rapist can only be fined up to $75,000 - the non-Alaskan job seeker, a father trying to provide for his kids or a mother trying to provide for hers, can be fined $50,000. The rapist or murderer could get thrown into prison for 20 years - that father or mother looking for a job in Alaska can get a 10 year sentence.

Sec. 38.45.200

* Singling out the infant mining industry and the troubled petroleum and timber industries along with their subcontractors as targets of this onerous bill is clever but clearly unwise and not in the best interests of the State of Alaska.

Sec. 38.45.250

* As one of the most widely recognized violators of the concepts embodied in local hire and local purchase, the authors of the bill again would exempt the state from coverage under this chapter.

* As the bill is now written, a "qualified resident" not to be turned down by Alaskan employers for a job, can be a dope addict or an unreformed alcoholic or any other person who lacks ability for interpersonal relationships.

* Alaskans in search of work in communities other than his or her place of residence, would have to establishe residency in another community where job opportunities are available for a 30 day period before being eligible for employment under this bill. The Big Delta resident looking for work in Fairbanks would have to give up his or her home in Big Delta in order to get a job under this act.

A resident of Seattle could displace a man from Kodiak working on a timber project in Southeast if that Seattle resident moved into an apartment in Ketchikan, waited 30 days and then went to the State to get his green card giving him job preference over the Alaskan.

Principles to be Incorporated into Local Hire Bill

* Each "finding of fact" must be supported with conclusive documentary evidence.

* Legislation must be designed so as to be obviously directed at the problem of unemployment in Alaska.

* Focus of legislation must be on all industry sectors in Alaska, including all three levels of government.

* Bill should include a provision directing the State Department of Labor to conduct, or to contract for, a survey of the problem of unemployment in Alaska, including the extent of underemployment and "marginal employment", with particular emphasis on structural problems and a clear deliniation of cyclical and seasonal unemployment.

* Bill should provide for a comprehensive analysis and publication of the data consistent with safeguards for confidentiality.

* Legal protection of the confidentiality of all data collected assuring maximum protection of the privacy of the individual and trade secrets of Alaska businesses, must be incorporated.

* A promotional effort analogous to that developed by and for the visitor industry aimed at "marketing" the Alaskan worker should be provided for.

* A provision for a public/private partnership for job training and skills development.

* All provisions must not be in violation of federal and state legal frameworks.

LOCAL HIRE IN ALASKA:

NEW PROPOSALS AND INITIATIVES

ALASKA HIRE TASK FORCE

FEBRUARY 1986

INTRODUCTION

After the Alaska Supreme Court issued a ruling that effectively prevented Alaska's resident employment preference law on public construction projects from being enforced, a task force was established by Governor Sheffield in October 1985 to examine the issue of local hire in Alaska and to develop specific options and alternatives for maximizing and promoting Alaska hire. The task force was composed of representatives of various state agencies and its efforts were coordinated and organized by Department of Labor Deputy Commissioner Bob Landau.

This report consists of summary descriptions of the proposals, ideas, and initiatives regarding local hire received by the Department of Labor from many state agencies and from sources outside of state government. Each state department was requested to examine its own programs, statutes, and regulations to determine whether they could be modified or amended to promote the use of Alaskan businesses, products, and workers. Because of this broad perspective, the proposals described in this report are wide-ranging in nature and approach the issue of local hire from many different directions. Some of the proposals are relatively narrow in focus, while others involve significant economic, political, or legal considerations. The report is intended primarily for policy makers as a reference source of new ideas and initiatives on local hire; it is not intended to describe local hire programs which are already in effect and ongoing, such as the voluntary compliance, contractor licensing, and non-resident vehicle inspection programs.

Each proposal in this report consists of the following elements: 1) an identification of the source of the proposal; 2) the name and telephone number of the appropriate contact person (who may not necessarily be related to the source of the proposal); 3) a summary of the proposal, including as much relevant information as was made available to the task force; 4) a general explanation of how the proposal would be implemented, including whether new legislation or regulations would be required; 5) a general description of the estimated cost or fiscal impact of the proposal; and 6) a brief overview of any anticipated legal or constitutional problems.

It is the hope of the task force that this report will be a useful reference source and decision-making tool in the formulation of policies and remedies on the issue of local hire in Alaska.

1. Comprehensive Minority Business Enterprise Program

Source: Department of Administration
Contact: Michael McMullen, 465-2200

Summary of Proposal: A comprehensive minority business enterprise (MBE) program could be developed to apply to all non-construction contracting, including professional services contracts. Currently, only the Department of Transportation and Public Facilities (DOT/PF) administers a minority business enterprise and women's business enterprise program, but this program has been limited to DOT/PF's construction contracts. A statewide MBE program would track similar federal programs that typically set aside ten percent of all covered work for minority contractors. Such set-asides would increase the number of bids awarded to small minority firms in Alaska, increasing the likelihood that Alaskan workers (especially minority Alaskans) would provide the goods or services.

Implementation: A comprehensive MBE program could be implemented either through legislation or by an executive order, and would also require amendments to the state's purchasing and contracting regulations. Unfortunately, the Department of Administration's efforts to develop a strong MBE program have been stalled by the failure of anticipated federal funds to be provided. Once adequate funding is obtained, it is estimated that it would take approximately one year to develop the necessary components for a comprehensive MBE program.

Costs: To develop a comprehensive MBE program, the Department of Administration had anticipated federal funding in the amount of $150,000, together with matching funds from the Department of Commerce and Economic Development. Once the program is in operation, state contracting agencies would incur administrative costs for monitoring compliance and conducting any necessary enforcement activity.

Legal Considerations: Set-asides for minority business enterprises exist in many states and have been found to be constitutional by the U.S. Supreme Court in Fullilove v. Klutznick, 448 U.S. 448 (1980). To be legally defensible, however, any legislation or executive order authorizing minority business set-asides should contain factually supported findings establishing past discrimination or high unemployment among minorities in Alaska.

2. Forest Products Preference

Source: Department of Commerce & Economic Development, Office of Forest Products
Contact: Thyes Shaub, 465-2094

Summary of Proposal: This proposal contemplates that research be done on the ability of the Alaska timber products industry to supply in-state markets. If such research shows that Alaska timber products can competitively supply in-state markets, then a four-step plan would be undertaken to implement the existing preference for Alaska wood products contained in AS 36.15.010-.020. Although this statute has been in existence since at least 1949, it has never been implemented or enforced.

Implementation: The first phase of this project would involve research by the Department of Commerce and Economic Development's Office of Forest Products. If the research yields positive results, regulations would be drafted to implement and enforce the statutory preference for Alaska timber products. It is not anticipated that additional legislation would be required.

Costs: The Department of Commerce and Economic Development has asked for a $20,000 increment in its FY 87 budget to begin research on this project. Additional costs would be incurred in the subsequent implementation and enforcement of the timber products preference.

Legal Considerations: This proposal raises constitutional questions similar to those described in Proposal No. 30 ("Buy Alaskan" Legislation).

3. Loan Program Incentives

Source: Department of Commerce & Economic Development, Division of Investments
Contact: Paul Arnoldt, 465-2510

Summary of Proposal: In its various loan programs, Department of Commerce and Economic Development could offer economic incentives to applicants who agree to use Alaskan businesses or products. For example, the Department could offer a 1 percent reduction from standard interest rates on its boat building loans where the applicant agrees to use an Alaskan boat builder. Since there are very few Alaskan boat builders, this would create an additional incentive for new builders and would likely result in increased employment opportunities for Alaskans.

Implementation: This proposal could be implemented under current statutes, but would require a change to existing regulations.

Costs: Administrative impact would be minimal. Fiscal impact to the State would be a reduced amount of interest collected on the affected loans. No other significant impacts are anticipated.

Legal Considerations: This proposal raises constitutional questions similar to those described in Proposal No. 30 ("Buy Alaskan" Legislation).

4. Economic Disaster Regulations

Source: Goldberg Report on Rural Unemployment (Sept. 1984)
Contact: Bob Landau, 465-2700

Summary of Proposal: Under current Alaska law, AS 44.33 authorizes both a local contractor preference and a local hire preference in any area of the State proclaimed by the Governor to be an economic disaster area. In order to qualify as an "economic disaster area," it must be shown that the annual income to workers in the designated area has dropped below the average annual income for workers in that area over a 10-year period, and that the drop in income is of such magnitude that the average family income of all residents in the designated area is below the federal poverty income threshold. Once an area has been proclaimed as an economic disaster area, residents of the area may be given first preference in hiring on state-awarded contracts, and qualified local contractors may also be preferred in state contracting.

Although this legislation was first enacted in 1976, the Department of Commerce and Economic Development has never adopted regulations to implement the program. Even though this legislation does not provide a broad-based solution to the local hire problem, it does offer a limited and narrowly-focused remedy for extreme or emergency situations. It would be advisable to have implementing regulations in place in the event an area of the State is impacted by economic catastrophe.

Implementation: Pursuant to AS 44.33.305, the Department of Commerce and Economic Development, in consultation with the Department of Labor, would adopt implementing regulations. It is also likely that the statute itself may need some re-drafting to avoid any constitutional overbreadth problems.

Costs: The principal cost involved would be the time and effort to promulgate implementing regulations and make appropriate income determinations under the statute.

Legal Considerations: The present economic disaster statute could probably withstand constitutional challenge. The primary concerns would be the Privileges and Immunities clause and the Alaska Equal Protection clause; however, the discrimination against nonresidents occurs under such

limited emergency circumstances that the statute would likely be upheld. The statute would be more defensible if it were amended to limit the hiring preference to unemployed residents in the area impacted by economic disaster.

Other Considerations: There is presently a bill under active consideration by the Legislature (HB 466) which contains a hiring preference on public construction projects for residents of an area impacted by economic disaster. The formula for triggering the hiring preference in HB 466 is similar to AS 44.33, although the preference itself would be limited to 50 percent of workers on the project and would be administered by the Department of Labor instead of the Department of Commerce and Economic Development.

5. Capital Project Grant Programs

Source: Department of Community & Regional Affairs, Division of Municipal & Regional Assistance
Contact: Michael Cushing, 465-4700

Summary of Proposal: Certain state programs which provide for capital project grants could introduce stipulations or incentives which require or encourage local hire and local purchase. The Department of Community and Regional Affairs operates several such programs, including the Rural Development Assistance Program and the Bulk Fuel Storage Facility Grant Program. For the most part, the relatively small size of these grants has discouraged significant participation by nonresident labor. Somewhat more often, however, project materials and equipment are purchased outside of Alaska. In any grant project where local materials or products are available at reasonable prices, grant provisions should favor the use of local items. Specific (named-recipient) legislative grants to unincorporated communities (administered by DCRA) and incorporated communities (administered by the Department of Administration) could also include grant provisions that promote local hire and local purchase.

In addition to the more obvious concerns about the constitutionality of local hire and local purchase grant provisions, attempts to formulate such provisions should recognize the basic unmet needs and limited administrative capacities of many smaller Alaskan communities. Provisions for local hire and local purchase should not have the effect of precluding access to needed basic community improvements.

Implementation: The various state agencies which administer capital grant programs, as well as the Office of Management and Budget, would convene and establish uniform capital project grant provisions (incentives and/or requirements) directed at achieving the desired effects on local hire and local purchase. These agencies would be assisted by the Departments of Labor and Law to ensure that the provisions, and any necessary implementing regulations, were legally satisfactory. Some form of participation by legislative members or staff would be necessary with regard to incorporation of such measures into designated legislative grant provisions.

Costs: No significant administrative costs. Impact on the grant recipients and contractors would be a function of the actual terms of the grant provisions (e.g., what percentage above outside prices, if any, would be considered "reasonable" local prices?).

Legal Considerations: This proposal raises constitutional questions similar to those described in Proposals No. 30 and No. 32.

6. Employment Services and Incentives for Teachers

Source: National Education Association
Contact: Robert Manners, 586-3090

Summary of Proposal: It has been a common practice for certain school districts, especially in rural areas, to recruit new teachers from outside Alaska. There is a substantial number of qualified and certificated Alaskans who want to teach but do not have adequate information or counseling on jobs which may be available. The development of improved employment information and placement services for teachers, available to all teachers and school districts in the state, would tend to promote the hiring of qualified Alaskan teachers first.

In addition, the state might develop an incentive program to encourage teachers to teach in rural areas of the state, together with similar incentives to encourage rural Alaskans to pursue careers in public education. Such a program could also include disincentives or penalties for school districts that recruit teachers from outside Alaska before exhaustively searching for qualified and available teachers from within the state.

Implementation: The Department of Education, in conjunction with the University of Alaska and the Department of Labor, could establish a data base consisting of all certificated teachers in Alaska and make appropriate referrals to school districts as teacher positions become available. The Department of Education could also develop the incentive programs described above as part of its allocation of funds to the school districts in the state. Until specific programs are developed, it is unknown whether any statutory or regulatory changes would be required.

Costs: Difficult to estimate until specific programs are developed.

Legal Considerations: The legality of this proposal would depend on how the above programs are structured and whether there would be any direct discriminatory impact on nonresident teachers. Assuming the programs are limited to providing employment information or referral services to all school districts and teachers that apply, there should be no constitutional problem.

7. Depressed Area Legislation

Source: Goldberg Report on Rural Unemployment (Sept. 1984)
Contact: Bob Landau, 465-2700

Summary of Proposal: After the U.S. Supreme Court declared the old Alaska Hire law unconstitutional in Hicklin v. Orbeck, a bill (HB 316) was introduced in 1979 to provide a resident employment preference without the defects identified in the Hicklin decision. The mechanism proposed was superficially similar in structure to, but substantially broader in application than, the economic disaster law described in Proposal No. 4. HB 316 was never enacted, despite the substantial effort to tailor it to the requirements of the Hicklin decision, possibly because the bill resulted in a rather complex scheme.

HB 316 essentially proposed an employment preference for Alaska residents on State contracts in depressed areas. A "depressed area" was defined as a borough, city, village or labor area in which less than 50 percent of the population aged 18-64 was employed, or where the unemployment rate was 9 percent or more. In an effort to avoid constitutional problems, a provision was included which would enable areas in other state to qualify as depressed areas if their average insured unemployment rate exceeded 7.5 percent. To further preserve the constitutionality of the bill, the employment preference would only be extended to residents of depressed areas who were either unemployed or marginally employed.

As originally introduced, HB 316 applied to all employment resulting from a State loan, oil or gas lease, easement, right-of-way permit, or unitization agreement to which the state was a party and which was executed or renegotiated after the effective date of the bill, as long as the employment activity took place within Alaska. The bill was later revised to apply only to covered employment within a depressed area rather than anywhere within the state.

Enactment of HB 316 or a similar bill today would affect a large part of the state, since there are many areas which have an unemployment rate above 9 percent. One possible variation of this proposal would be to trigger the resident hire preference whenever the unemployment rate of an area exceeds the national average, rather than tie it to a fixed percentage.

Implementation: In January 1986, a new resident hire preference bill (HB 466) was introduced in the Legislature and is currently under active consideration. Among other things, HB 466 would create a local hire preference in "underemployed" areas of the state whenever the unemployment rate of that area is substantially higher than the natural average due to the lack of employment opportunities and the displacement of local workers by nonresidents. The preference mechanism in HB 466 is substantially similar to that contained in this proposal.

Costs: There would be a significant impact on the Department of Labor in the administration and enforcement of a new hiring preference for "underemployed" areas of the state. The Department would have to conduct ongoing research to determine whether any areas of the state qualify as "depressed" or "underemployed" areas, whether the employment of nonresidents has been a peculiar source of unemployent within the area, and whether specific job applicants are eligible for the hiring preference.

Legal Considerations: With some fine tuning, this proposal might be able to withstand judicial review. The principal concerns would be to factually demonstrate the impact of nonresidents on an area and to limit the preference only to those unemployed residents of a depressed area.

8. Licensing of Construction Workers

Source: International Brotherhood of Electrical Workers
Contact: Bob Bacolas, 465-4870 or Don Wilson, 264-2452

Summary of Proposal: Construction has been one of the industries hardest hit by the influx of nonresident workers displacing qualified Alaskans. Among the construction trades and crafts, only plumbers and electricians are required to be licensed by the State of Alaska. Such licensing has not only promoted safety and competency but has also helped to curtail the flow of nonresident workers in those two crafts. Licensing could be expanded to cover laborers, carpenters, heavy equipment operators, welders, painters, and other classes of workers in the construction industry.

Because licensing normally involves the taking of an examination covering local codes and work conditions, it would be more difficult for unlicensed nonresident workers to travel to and from Alaska to work for short periods of time. In addition, expanded licensing within the construction industry would provide an identifiable labor force qualified to perform work within the construction industry.

Implementation: Expanded licensing of construction crafts and trades would require amendments to Alaska's occupational licensing statutes. After the enactment of such legislation, a comprehensive set of regulations would be necessary to properly administer the new licensing categories. The most appropriate agency to administer and enforce construction craft licensing would appear to be the Department of Labor since it already is responsible for the licensing of plumbers and electricians, or, alternatively, the Department of Commerce and Economic Development, which is responsible for other occupational licensing.

Costs: Regardless of which state agency is selected to administer and enforce construction craft licensing, there would be additional costs for both field personnel and administrative staff. Costs would be comparable to those currently expended by the Departments of Commerce and Labor in their administration of existing licensing laws.

Legal Considerations: Assuming that construction craft licensing is based on the grounds of safety and minimum competency, and that the licensing requirements are equally applied to all regardless of residency, there should be no constitutional problems.

9. Regulation of Subcontracting Practices

Source: International Brotherhood of Electrical Workers
Contact: Bob Landau, 465-2700

Summary of Proposal: On many construction projects, bid shopping (also known as "bid chiselling") is a common practice. Bid shopping is the practice of using the lowest bid already received by a general or prime contractor to pressure other subcontractors into submitting even lower bids. Bid shopping has been regarded as unethical, even illegal, because it tends to break down local wages and working conditions by making it necessary for a subcontractor to seek out the lowest priced employees, regardless of their residency.

The State of California, for example, has in place a comprehensive statutory scheme regulating subletting and subcontracting on public construction projects. Bidders on these projects must identify all subcontractors by name when they submit their bids or become liable for statutory and contractual penalties. In addition, each subcontractor on a public construction project is required to submit a performance and payment bond if so requested by the prime contractor.

Implementation: Regulation of subcontracting practices on public works projects would require new legislation and regulations. The proposed procurement bill drafted by the Senate Select Committee (SB 341) addresses this issue and requires subcontractors to be identified and licensed when the initial bids are submitted.

Costs: Some administrative costs would be incurred by state contracting agencies in the process of administering, monitoring, and enforcing compliance with the new subcontracting requirements.

Legal Considerations: No legal problems foreseen. Regulation of subcontracting practices may also have a positive effect on compliance with the state's prevailing wage requirements on public construction projects (AS 36.05).

10. Job Service Coordination with Alaska Native Organizations

Source: Department of Labor, Division of Employment Security
Contact: Jack Shay or Ed Musslewhite, 465-2712

Summary of Proposal: The Division of Employment Security could strengthen its recruitment and job placement activities in rural areas by entering into cooperative agreements with certain Alaska Native entities, including non-profit organizations and regional and village Native corporations. These Native organizations can assist in reaching certain areas and populations of the state more effectively than the Division's existing Job Service network. Bringing more rural Alaska Natives into the Job Service system would enhance their training and employment opportunities.

Implementation: This approach could be implemented through cooperative agreements between the Division of Employment Security and selected Native groups. No legislation or regulations would be required.

Costs: Fiscal impact would be expected to be relatively slight. Some costs may be incurred in funding outreach and recruitment activities by the cooperating Native organizations.

Legal Considerations: No problems foreseen.

11. Expansion of Job Service Network

Source: Department of Labor, Division of Employment Security
Contact: Jack Shay or Ed Musslewhite, 465-2712

Summary of Proposal: The Department of Labor could expand its network of regional Job Service offices to serve selected locations during seasonal peak hiring periods. For example, the Department recently opened summer offices in Eagle River and Naknek on a pilot program basis, with considerable success. In 1986, the Department plans to place a seasonal interviewer in Cordova during peak hiring periods. Past experience has shown that the more accessible Job Service offices are to both employers and job seekers, the more likely it will be that Alaskans are referred for employment and subsequently hired.

Implementation: No legislation or regulations required.

Costs: Estimated $10,000 to $15,000 for proposed expansion of temporary offices.

Legal Considerations: No problems foreseen.

12. Publicity and Advertising Campaign

Source: Department of Labor
Contact: Bob Bacolas, 465-4870 or Don Wilson, 264-2452

Summary of Proposal: The Department of Labor could coordinate a promotional campaign to publicize the positive aspects of hiring residents and the resulting beneficial impact on the state's economy. The Department could also more widely advertise its various employment services available to employers and job seekers, particularly in smaller communities. In addition, state contracts and grant forms could be revised to explicitly encourage the hiring of Alaskans and the use of the Job Service network to locate qualified Alaskans. Finally, the Department could publicize on a regular basis the names of those persons or companies hiring nonresident workers on public construction projects, based on its ongoing audits of weekly certified payrolls on such projects. Such publicity could bring about positive public pressure on contractors to use local workers.

Implementation: No legislation or regulations required. Publicity and advertising could take the form of press releases, direct mail, radio and TV spots, newspaper advertising, and coordination with existing organizations such as Alaskans First. State forms and contracts could be amended to include appropriate local hire language.

Costs: Fiscal impact would be variable, depending on the medium and frequency of publicity or advertising.

Legal Considerations: The only apparent legal concern relates to possible disclosure of confidential information obtained from employers and employees. Disclosure of such information could possibly violate applicable confidentiality provisions, depending on the manner in which the information was released.

13. Regulation of Illegal Aliens Working in Alaska

Source: Department of Labor
Contact: Bob Landau, 465-2700 or Bob Bacolas, 465-4870

Summary of Proposal: Employment opportunities in Alaska have been negatively affected by the increasing employment of illegal aliens. Certain state agencies that conduct substantial on-site inspections, such as the Department of Labor, have routinely made complaints and referrals to the U.S. Immigration and Naturalization Service (INS) regarding illegal aliens. The state could strengthen its working relationship with the INS to more effectively monitor illegal alien hire and conduct prompt enforcement. Specific areas and industries within the state could be targeted for monitoring and inspection based on past experience. This proposal envisions a closer, better coordinated federal-state effort to determine the dimensions of the problem and to explore available remedies, including the feasibility of state legislation directly regulating the employment of illegal aliens.

Implementation: A working group would be established, consisting of representatives from various state agencies impacted by the presence of illegal aliens, such as the Departments of Labor, Public Safety, Commerce and Economic Development, and Fish and Game. Representatives of the INS and other appropriate federal, state or local agencies would also be included. The primary task of the working group would be to develop a more efficient and coordinated approach to the problem of illegal alien employment. This group could also consider the legality and feasibility of direct state regulations of the employment of illegal aliens.

Costs: The establishment of a federal-state working group on illegal alien employment would not involve significant costs and could likely be funded within existing budgets. Actual state legislation and enforcement against illegal alien employment, however, would involve significant additional costs for both administrative and field personnel.

Legal Considerations: Although the federal government has primary jurisdiction in immigration matters, recent court decisions such as DeCanas v. Bica, 424 U.S. 351 (1976), have permitted state regulation of the employment of illegal aliens where it can be shown that such employment would have an adverse effect on lawful resident workers and where the state legislation does not conflict with applicable federal laws. The creation of a federal-state working group on illegal alien employment in Alaska would not give rise to any legal problems.

14. Use of Alaska Public Broadcasting System

Source: Department of Labor, Division of Employment Security
Contact: Jack Shay or Ed Musslewhite, 465-2712

Summary of Proposal: The Employment Security Division's Job Service network could use the Alaska Public Broadcasting System during its current "off" time to list all available job openings. Since the state is already subsidizing the public broadcasting system, this would be a cost-effective way to alert a larger number of Alaskans to available job opportunities. In keeping with current Job Service regulations, specific employers would not be identified; interested job applicants would be referred to their nearest Job Service local office.

Implementation: Job Service regulations may require minor changes.

Costs: This approach would involve little or no cost.

Legal Considerations: No problems foreseen.

15. Foreign Fisheries Observer Program

Source: Department of Labor, Division of Employment Security
Contact: Willard Dunham, 224-5276

Summary of Proposal: Since 1973, U.S. biologists have been on board foreign fishing vessels within the 200-mile limit to observe and record the catches brought aboard. This information allows the National Marine Fisheries Service (NMFS) to monitor each foreign nation's progress toward its yearly quota, to evaluate the status of stocks of target species, and to assist in determining reasonable quotas for future years.

There are approximately 500 observers who are employed during the summer months in the Northwest fisheries area, but very few if any of these are Alaskans. The basic problem appears to be that the NMFS has subcontracted the recruitment and training portion of its observer program to a private contractor in Seattle and to the Universities of Washington and Oregon. Consequently, virtually all of the observers who are recruited and trained for the program come from outside Alaska. Minimum qualifications for the observer positions are U.S. citizenship, good health, and a Bachelor's degree, preferably in fisheries or biological sciences. Although the observer program provides only temporary employment, many of the observers are able to use their experience to gain permanent employment within the fishing industry, academia, or with the NMFS.

The state could take various steps as described below to gain entry into the Foreign Fisheries Observer Program for qualified Alaskans.

Implementation: The critical element of gaining entry into the observer program would be to obtain approval for an Alaskan subcontractor to handle recruitment and training in Alaska. The appropriate lead agency for this purpose would appear to be the University of Alaska's Institute for Marine Sciences, with support from the Alaska Vocational Technical Education Center, the Departments of Fish and Game, Commerce and Economic Development, Labor, and the City of Seward. Discussions have already been initiated to seek Alaskan subcontractor status but the effort may require a broader base of support, including the Governor, the Legislature, and the Congressional delegation. It does not appear that any changes to state laws or regulations would be required.

Costs: The recruitment and training costs for the Foreign Fisheries Observer Program have been largely subsidized by the federal government through the NMFS, therefore minimal state funding should be required.

Legal Considerations: No legal problems foreseen.

Other Considerations: A bill introduced during the 1985 legislative session (HB 355) would establish a domestic observer program, similar to the federal program, for all fishing vessels required to be registered in Alaska. This bill is under active consideration in the House.